Supreme Court, U.S.
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No. 03-501

IN THE

Supreme Court of the United States

STANFORD HOSPITAL AND CLINICS, SUCCESSOR TO UCSF STANFORD HEALTH CARE,

Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD and SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 715,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

REPLY BRIEF

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STATEMENT PURSUANT TO RULE 29.6

Petitioner's corporate disclosure statement was set forth at page *ii* of its Petition for a Writ of Certiorari, and there are no amendments to that statement.

PETITIONER'S REPLY BRIEF

In its brief in opposition, the National Labor Relations Board ("Board") raises several new points:

1. The Board argues that because the court of appeals "permitted petitioner to advance its legitimate interests by making appropriate modifications to its overbroad rule," the court of appeals' holding is "limited and fact-bound." Brief for the National Labor Relations Board in Opposition ("Brief in Opp."), p. 10. That ignores the sweeping legal conclusion of the court of appeals that "neither this court nor the Board has ever drawn a substantive distinction between solicitation of fellow employees and nonemployees." Pet. App. 16a. This broad statement of law potentially requires employers to allow solicitation of nonemployees everywhere that solicitation of employees is permitted. It will have a profound impact on the future ability of hospitals to prohibit solicitations by employees that are likely to interfere with patient care.

2. The Board erroneously asserts that "[a]lthough petitioner now contends that the Board's definition of 'immediate patient care areas' is irrational (*see* Pet. 13-15), petitioner failed to raise that contention before the Board." Brief in Opp., p. 13. In fact, petitioner raised its contention in its brief before the Board. *See* Brief of the Respondent (filed with the Board on Jan. 28, 2000), pp. 54-59. Petitioner specifically argued:

> In *Baptist Hospital*, the Supreme Court recognized that "a modern hospital houses a complex array of facilities and techniques for patient care and therapy that defy simply classification. Patients not undergoing treatment at the moment are cared for in a variety of settings—recovery rooms, intensive-

> care units, patients' rooms, wards, sitting rooms, and even the corridors, where patients often are encouraged to walk, or to visit with their families. In different hospitals, the use and physical layout of such a variety of areas may require varying resolutions of questions about the validity of bans on union solicitation [and] in discharging its responsibilities for administration of the Act, the Board must frame its rules and administer them with careful attention to the wide variety of activities within the modern hospital."

Id., pp. 57-58.

The Board portrays its decision as if there was merely a factual determination that "petitioner did not demonstrate that patients and their families actually make use of all the waiting areas outside of the patient units." Brief in Opp., p. 14. The Board decided that a rule which prohibited solicitation in "lounges used by patients and their families or visitors" (App. 118a) is overbroad. Such a rule should be presumptively valid because, on its face, it is addressed to "patient care" areas. Petitioner squarely argued to the Board that hospital patients should be protected "from exposure to solicitation in areas in which patients and their visitors maybe, and wherein patient care—however infrequent—may take place." Brief of the Respondent, pp. 58-59.

3. The Board also erroneously asserts that petitioner did not raise before the court of appeals its argument that the Board should consider the availability of other areas of the hospital for solicitation and organizational activity. Brief in Opp., p. 16. Again, the Board is wrong. Petitioner argued in the court of appeals that petitioner's "position seems particularly compelling

in light of the many alternative venues for such communication available to its employees under [petitioner's] policy—including dedicated employee break rooms located inside these very same nursing units!" Brief of Petitioner Stanford Hospital and Clinics, successor to UCSF Stanford Health Care (filed in Court of Appeal on Sept. 20, 2002), p. 35 n.21.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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